IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3060 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JETHABHAI MEPABHAI MAKWANA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3060 of 2003

MR NV ANJARIA for Petitioner No. 1

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondent No. 1

MR NIKHILESH J SHAH for Respondent No. 2

..... for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. The petitioner is a resident of Anjar and has been aggrieved by Town Planning Scheme No. 3 made by respondent no. 2. His residential house, which is on

Survey No. 1237-original plot No. 82, would be adversely affected because the construction put up by him on approximately 20 sq meters of the said land will have to be demolished as a result of the scheme.

2. The facts giving rise to the present petition, in a nutshell, are as under;

2.1. Because of the earthquake, which had affected Gujarat, and more, particularly, Anjar, Bhuj, Rapar and other places in the western part of Gujarat on 26th January, 2001, respondent no. 2 had declared its intention to make a town planning scheme in respect of Anjar. The said declaration was made under the provisions of Section 41(1) of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act") on 4th May, 2002. In the instant case, the petitioner is concerned with Anjar Town Planning Scheme No. 3. The petitioner is having his residential house on original plot No. 82, and he has been allotted Final Plot No. 82 in lieu of the said plot. As per the draft scheme, boundaries of the petitioner's original plot were quite different and as a result thereof, a substantial portion of the petitioner's building was to be demolished. The petitioner, therefore, filed his objections, which were duly considered by respondent no.2, and upon finding substance in the objections of the petitioner, the plot was reconstituted by respondent no.2. Ultimately, the preliminary scheme, with the reconstituted plot of the petitioner, was sanctioned by the respondent government on 21st January, 2003 under the provisions of Section 65 of the Act.

2.2. The petitioner has prayed in this petition that the respondent authorities should be permanently restrained from implementing the scheme so that no portion of the land, over which his residential house is constructed, is taken away from him or no portion of his residential house is demolished.

3. Learned advocate Shri Anjaria appearing for the petitioner has submitted that the Final Plot, allotted to the petitioner has not been reconstituted as per the provisions of Section 45 of the Act. It has been submitted by him that the provisions of Section 45 makes it obligatory on the part of respondent no. 2 to see that the size and the shape of every reconstituted plot should be suitable for building purpose, but the shape of the reconstituted plot allotted to the petitioner is quite irregular. Moreover, looking to the provisions of Section 40 of the Act, his building ought not to have

been ordered to be demolished by respondent no.2.

4. It has been thereafter submitted by him that the scheme has been made by respondent no. 2 for rehabilitation of the residents of Anjar, who were adversely affected because of the earthquake and, therefore, in the process of rehabilitation, the respondent authorities should not have demolished the building belonging to the petitioner. It has been submitted by him that his building could withstand the shock of the earthquake, but because of bad planning on the part of the respondent authorities, the building will have to be demolished.

5. He has further submitted that because of demolition of a portion of his building, his fundamental right to live would be adversely affected and thereby his right guaranteed under Article 21 of the Constitution of India has been violated and, therefore, he has submitted that the respondent authorities should be restrained from demolishing any portion of his building. It has been submitted by him that even if the petitioner is given some compensation in terms of money, the said compensation would not be adequate or would not be sufficient as his right to life under Article 21 has been infringed.

6. Thereafter, he has submitted that the action of the respondent authorities is violative of Article 14 of the Constitution of India as the respondent authorities have acted in an absolutely arbitrary manner while making Town Planning Scheme No. 3 of Anjar City. It has been submitted by him that the authorities ought to have reconstituted the final plot of the petitioner in such a manner that it does not become necessary to demolish any part of his building. By not taking due care, the respondent authorities have acted arbitrarily and, therefore, the petitioner's right guaranteed under the provisions of Article 14 of the Constitution of India has been violated.

7. It has been thereafter submitted by him that the authorities have also acted arbitrarily by asking the petitioner to pay a sum of Rs. 53,637=50, though the petitioner is not given any additional land . Moreover, a portion of his building is also being demolished by the respondent authorities. According to him, by demanding the aforestated amount from the petitioner, the respondent authorities are acting unreasonably and arbitrarily.

8. While relying upon the judgement delivered by the Hon'ble Supreme Court in the case of TERI OAT ESTATES (P) LTD Vs. U.T., CHANDIGARH AND OTHERS, (2004) 2 S.C.C. 130, it has been submitted by the learned advocate that there is violation of the doctrine of proportionality in the process of making and giving sanction to the Town Planning Scheme in question. It has been submitted by him that in the process of planning, the respondent authorities ought to have maintained a proper balance between the adverse effects of the planning on one hand and the benefits, which the residents of Anjar would get, on the other. It has been submitted by him that in the process of planning, the respondent authorities have not taken due care to strike a balance between the two and in the said process more harm has been caused to the residents of Anjar, including the petitioner and, therefore, the scheme made by respondent no. 2 deserves to be quashed and set aside.

9. It has been further submitted by him that in the process of making the scheme, several errors have been committed by respondent no. 2, and as the said errors can be said to be the errors of jurisdiction, this Court has jurisdiction to examine the same under the provisions of Article 226 of the Constitution of India, to look into it. He has therefore submitted that this Court should exercise its jurisdiction and give directions to the authorities to make variation of the scheme.

10. The learned advocate has also relied upon the observations made by this Court in the case of MANUBHAI F. PATEL Vs STATE OF GUJARAT AND OTHERS, AIR 2000 GUJARAT 170, to show that the relevant provisions of the Act should be read in such a manner that the purpose with which the said Act has been enacted is achieved. It has been submitted by him that the Act has been enacted to see that the cities are developed in a planned manner. Moreover, looking to the devastating effects of the earthquake, effort should have been made by the respondent authorities to protect the properties, which were not destroyed due to earthquake but in the instant case, the authorities have directed to demolish a building which was not destroyed due to the earthquake.

11. He has also drawn my attention to the judgement delivered in the case of BIPINCHANDRA J. DIWAN & ORS Vs. STATE OF GUJARAT, 2001 (2) GLH 623 giving details with regard to the plight of the residents of Anjar and other cities, who suffered because of the earthquake. This Court has observed, in the said judgement, as to how the government authorities should act and behave at the time

when such a calamity takes place. It has been submitted by him that in view of the fact that the petitioner and similarly situated persons have already suffered, the respondent authority should not harm the petitioner further by demolishing a portion of his residential house.

12. It has been submitted by the learned advocate that in the process of demolishing a portion of the building of the petitioner, possibly the entire building might be demolished or the remaining structure might become useless. It has been therefore submitted that reconstitution of the Final plot in a manner, which would take away the petitioner's property, is arbitrary and illegal.

13. In pursuance of notice issued by this Court, learned Advocate General Shri S.N. Shelat, with learned A.G.P. Ms. Maithili Mehta, has appeared for respondents nos. 1 and 3, whereas learned advocate Shri N.J. Shah has appeared for respondent no. 2.

14. It has been submitted by the learned advocates appearing for the respondents that all possible efforts were made by the respondent authorities to see that least harm is caused to the residents of Anjar city in the process of making the Town Planning Scheme for Anjar. They had tried to see that as far as possible minimum number of persons are adversely affected and more benefits are given to more and more residents of Anjar. It has been submitted that out of 2981 original plots, which have been reconstituted into final plots, hardly 40 persons have approached this Court with a grievance about reconstitution of their plots. It has been thus submitted that less than 1.5% of the plot holders have greivance with regard to reconstitution. It has been submitted by them that in the process of planning, at times, some individuals have to suffer because, without disturbing some individuals, planning is not possible. It has been also submitted by them that Town Planning Scheme No. 3 is covering the village site land of Anjar City, where, in the past, buildings had been constructed in an absolutely haphazard manner, and it was almost impossible to make the scheme without adversely affecting some individuals.

15. It has been submitted that provisions of Section 45 of the Act were duly considered while reconstituting the final plots. Looking to the fact that in Anjar, town planning scheme was made for the first time and construction was made in a haphazard manner in the past,

it was impossible to reconstitute all final plots which will have regular size, because that attempt would have resulted into demolition of several buildings. Roads were required to be widened as the existing roads were quite narrow. For increasing width of the existing roads more land was required and that resulted into deduction of land from those who were having their plots abutting the roads.

16. It has been also submitted that even original plot of the petitioner was not having a regular shape. Moreover, his objection was considered and appropriate changes were made while reconstituting his plot before the draft scheme was sanctioned. Due to reconstitution of his plot, the petitioner is to get more land on his front side and a good frontage on a 6 meter wide road. Thus, according to the respondents, the allegation that the plot has not been reconstituted properly is not correct.

17. It has been also submitted that the scheme has not been made only for the purpose of rehabilitation but it is also for the purpose of town planning in a systematic manner. They have drawn attention of this Court to the object with which notification was issued under Section 6 of the Act on 9th May, 2001, which reads as under;

"AND WHEREAS there has been a vast destruction of human life and property in the area due to devastating earthquake on 26th January, 2001 and speedy implementation of reconstruction and rehabilitation programme is necessary.

AND WHEREAS with the approach of the monsoon, it has become extremely necessary for the towns to be developed in a systematic manner but with faster implementation of the earthquake rehabilitation programme.

AND WHEREAS in this background of trauma and devastation, it does not appear to be fair to expect the urban local bodies to be able to cope with the pressing needs of urgent planning and reconstruction of the housing stock, the need for creation of an area development authority was felt necessary. This authority is expected to carry out modern planning, repair and reconstruction of the infrastructure plans for new infrastructure and for facilitating the new reconstruction activity in the towns including

the towns where temporary shelters have been provided. The authority will have experts on its Board and will rely on expert advise for its decision making."

18. Thus, the scheme has not been framed only for the purpose of rehabilitation but the purpose is also to see that the town is developed in a systematic manner with faster implementation of the earthquake rehabilitation programme. Moreover, the object is also to carry out modern planning, repair and reconstruction of infrastructure.

19. It has been further submitted on behalf of the respondents that fundamental right guaranteed to the petitioner under Article 21 of the Constitution has not been violated by any of the respondents. It has been submitted that when the authorities have compensated the petitioner as per the provisions of the Act in respect of demolition of a portion of his property, it cannot be said that the petitioner has been deprived of his property, which has resulted into loss of shelter, and thereby his right guaranteed under the provision of Article 21 has been violated.

20. The learned A.G. has relied upon a judgement delivered by the Hon'ble Supreme Court in the case of BUTU PRASAD KUMBHAR AND ORS Vs. STEEL AUTHORITY OF INDIA LTD, 1995(2) SCC 225. The Hon'ble Supreme Court has observed in the said judgement that when a citizen is deprived of his property in accordance with law and for which he has been duly compensated, it cannot be said that the State has deprived the citizen of his right guaranteed under the provisions of Article 21 of the Constitution of India.

21. Thereafter, it has been submitted on behalf of the respondents that no right guaranteed to the petitioner under the provisions of Article 14 of the Constitution of India has been violated. The petitioner has not been given any discriminatory treatment. As a matter of fact, the respondent authority made a change in the draft scheme in pursuance of a suggestion made/objection filed by the petitioner. By virtue of the draft Town Planning Scheme, the petitioner was to lose substantial portion of his constructed property and some land but as a result of changes made in the draft scheme as per the suggestion made by the petitioner, construction put up on hardly 20 sq meters of land is to be demolished and no land is to be deducted from the original plot of the petitioner. It has been submitted

that in the process of Town Planning, especially when the construction in the past had been put up in a haphazard manner and without any planning, such eventualities do happen. Simply because the petitioner is adversely affected in the process of planning, it cannot be said that the respondent authorities have acted in an arbitrary manner. It has been added that the fact that the respondent authorities considered the representation of the petitioner and made changes before the draft scheme was sanctioned, clearly denotes application of mind and absence of arbitrariness on the part of respondent no. 2.

22. It has been also denied that the petitioner has been asked to pay a sum of Rs. 53,637=50 paise as alleged by the petitioner. Learned advocate Shri Shah has submitted that the said allegation is absolutely false because in fact the petitioner has been informed that a sum of Rs.1,00,000/- would be given to him as he is to suffer loss on account of demolition of a small portion of his building. In all, after adjustment of all amounts, a sum of Rs.75,356=80 paise would be paid to the petitioner by respondent no. 2. Thus, it is not true that the petitioner has to pay any amount to respondent no.2.

23. In reply to the argument that the respondents had committed breach of the doctrine of proportionality, it has been submitted that all possible efforts were made by the respondent authorities in ensuring that no citizen is unnecessarily put to difficulties while making the scheme. The learned Advocate General has submitted that as a result of the scheme, 2981 original plots have been reconstituted but only 40 plot holders have approached this Court or other forums for ventilating their grievances. The said fact clearly shows that the respondent authorities have planned the scheme in such a manner that least number of plot holders are adversely affected.

24. It has been thereafter submitted on behalf of the respondent authorities that the argument of the petitioner that errors have been committed by the respondent authorities in the process of making the scheme, and, therefore, this Court has jurisdiction to entertain this petition under Article 226 of the Constitution of India and it should give a direction to vary the scheme, is not correct. It has been submitted by the learned advocates for the respondents that no error has been committed, and there is no question of making any change or variation as suggested by the

petitioner, especially when the scheme has already been sanctioned under the provisions of Section 65 of the Act, which and has now become final.

25. It has been lastly submitted by the learned advocates that due care was taken to see that minimum harm is caused to the respondents as intention of the authorities was to render help to the earthquake affected persons. Moreover, while making the scheme, all provisions of the Act were duly considered and they were scrupulously followed.

26. I have heard the learned advocates at length and have also gone through the judgements cited by them. Upon hearing the learned advocates, it appears that the grievance ventilated by the petitioner in this petition is without much substance.

27. Looking to the fact that the earthquake had practically destroyed the city of Anjar, it had become absolutely necessary for the respondent authorities to make an effort to see that the residents of the city are rehabilitated as soon as possible, and the city is reconstructed in a planned manner. Rehabilitation was not the only object with which the scheme has been framed. The notification issued for constituting respondent no. 2 authority clearly states that the authority was constituted so as to see that the adversely affected residents are rehabilitated and the city is planned in a systematic manner. It was also the object to have modern planning and reconstruction of the infrastructure in a better manner. In the said process, someone is bound to be adversely affected. It is not in dispute, and even the learned advocate appearing for the petitioner could not dispute the fact, that the constructions, which had been put up by the residents of Anjar city in the past, was in an unorganized and haphazard manner. Most of the original plots were not of normal size and regular shape. As the area covered under the scheme is village site lands, there is hardly any space left open by the residents of the city while constructing their houses. Thus, houses had been constructed in such a manner that they were touching each other without leaving any margin. Moreover, the roads were also not having adequate width. It is a matter of common knowledge that at the time when Anjar was affected due to the earthquake, it was not possible for the government agencies as well as the NGOs to render necessary help by sending fire fighters, ambulances etc. to the places, which were seriously affected. The said difficulty was faced due to large scale destruction and

due to very narrow roads with irregular road alignment. It was therefore necessary for respondent no. 2 authority to make a good comprehensive scheme so that all errors, which had been committed by the residents of the city in the matter of construction of their houses in the past are rectified. In the said process, some citizens are bound to be affected in some way as some construction is required to be demolished for setting up better infrastructure. Thus, in the said process, about 40 persons, like the petitioner, have been adversely affected, who have approached this Court or other forums. Looking to the fact that hardly 1.5.% of plot holders have made grievance with regard to the scheme, prima facie, it appears that the number of persons making grievances are very negligible. One has to remember that in such matters, interest of the society or public at large is to be given more importance than interest of an individual. A person might suffer some loss for which he is duly compensated by the authorities. The petitioner is to be duly compensated for the loss suffered by him. It is pertinent to note that as a result of the scheme the petitioner will be having an approach road of 6 meters width. Before implementation of the scheme, possibly he was having frontage on a road having hardly 3 meters width. It is unfortunate that the petitioner has not considered the said benefit which he and his family will have for ever. Thus, as a result of the scheme, all residents of the city shall be having benefit of better roads and better living.

28. The petitioner has alleged that the petitioner has not been allotted a Final Plot reconstituted as per the provisions of Section 45 of the Act. Section 45(1), on which the learned advocate appearing for the petitioner relies upon, reads as under:

> "45(1) In the draft scheme referred to in section 44, the size and shape of every plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot as already built upon, to ensure that the building, as far as possible complies with the provisions of the scheme as regards open spaces."

It is pertinent to note that the shape of the original plot, which the petitioner was having, was not of regular shape. The said plot was abutting a road having width of approximately 3 meters. As a result of the scheme, the width of the said road has been increased to 6 meters. Thus, the petitioner is to get benefit of having frontage on a wider road. For the purpose of widening of the

road, normally those who are having their plots adjoining the roads have to lose some of their land because a part of their land is used for the purpose of widening of the road. In spite of the said position, the scheme has been framed in such a manner that the petitioner does not lose much of his land. The total area of his original plot and his final plot has remained the same. Thus, no loss of land has been suffered by the petitioner in the process of reconstitution of his original plot.

29. It is pertinent to note that, in the instant case, as a result of the draft scheme, substantial portion of the building belonging to the petitioner had to be demolished and the petitioner was also losing his land. In the circumstances, the petitioner had made a representation to respondent no.2, which was duly considered, and as a result thereof, changes were effected by respondent no. 2, whereby the construction put up on hardly 20 sq meters of land belonging to the petitioner is to be demolished and now total area of the land remains the same. Thus, all possible efforts were made by respondent no. 2 to see that genuine grievance ventilated by the petitioner was redressed. Even after the main grievance made by the petitioner had been redressed, the petitioner filed objections, when the preliminary scheme had been published. The said objection filed by the petitioner had been duly considered, but as it was not possible to make any further change in the final plot or the scheme, the request made by the petitioner was not acceded to.

30. It has been incidently submitted by the learned advocates appearing for the respondents that the petitioner's Final Plot will be having frontage on a road with a width of 6 meters. It has been submitted that the petitioner's entire construction cannot be saved as the petitioner cannot be allotted a bigger final plot than his original plot. Upon reconstitution of the plot, the petitioner will be having more land in front of his building, which would be abutting the main road. Moreover, by reconstituting the plot of the petitioner in different manner, the respondent authorities would have done injustice to other persons holding plots in the vicinity as the persons, who are owners of original plots nos. 84, 261/2, 83 etc., would have been adversely affected and they would have made more serious grievances with regard to their plots. Thus, all possible efforts were made by the respondent authorities to see that less damage is caused not only to the petitioner but to other plots holders also in the process of reconstitution of plots. Thus, it is clear that the grievance of the

petitioner that the provisions of Section 45 of the Act has been violated in the matter of reconstitution of his original plot is not correct, especially when the petitioner has been allotted a Final Plot with a better shape and more suitable for building purpose.

31. Another grievance of the petitioner that the scheme had been framed only for the purpose of rehabilitation and, therefore, no property belonging to the petitioner or any of the residents of Anjar should be disturbed or demolished or adversely affected as a result of the scheme, is not well founded. As stated by the learned Advocate General and as recorded in the notification issued by the respondent government, it is clear that the scheme has not been made only for the purpose of rehabilitation. Had it been so, it would not have been necessary for the authorities to make any Town Planing Scheme, because in that event, all those who had lost their houses due to the earthquake would have been permitted to construct their houses as they were there before the earthquake. If we look at the notification issued by the State of Gujarat under Section 6 of the Act constituting respondent no. 2 authority, it is clear that the authority is expected to carry out modern planing, repair and reconstruction of the infrastructure plans for new infrastructure and for facilitating the new construction activity in the town.

32. Thus, the submissions made by the learned advocate appearing for the petitioner that the scheme has been made mainly for the purpose of rehabilitation is not correct. Rehabilitation is one of the objects with which the scheme is made. The petitioner has ignored the fact that the scheme has been made for the purpose of having modern planning, repair and reconstruction of the infrastructure plan for new infrastructure and for facilitating new reconstruction activities. Thus, the submission of the petitioner that in the said process of rehabilitation, no development activity should be undertaken by respondent no. 2 so as to adversely affect any of the properties, is not correct. So as to have wider roads and to have new infrastructure, some of the residents might have to lose their property, including constructed buildings or part thereof or perhaps a portion of their land. Thus there is no substance in the submission that the scheme has been made mainly for rehabilitation and, therefore, no building can ever be demolished in pursuance of the scheme.

33. Even with regard to the allegation that the petitioner's rights guaranteed under the provisions of

Article 14 and 21 are violated, I do not see any substance in the said allegation. There does not appear to be any violation of right of the petitioner guaranteed under Article 21 of the Constitution of India. There does not appear to be any arbitrariness in the planning. As stated hereinabove, someone has to suffer when a city is being reconstructed in a planned manner especially when the city had been affected due to a devastating earthquake. As observed by the Hon'ble Supreme Court in the case of BUTU PRASAD KUMBHAR AND ORS Vs. STEEL AUTHORITY OF INDIA LTD (Supra), when a citizen is deprived of his property like his residential house, in accordance with law and when he is compensated in terms of money it cannot be said that the citizen's right guaranteed under the provisions of Article 21 is violated.

34. There is no substance in the allegation that respondent no. 2 has reconstituted the Final Plot to be allotted to the petitioner in an arbitrary manner and, therefore, there is no violation of rights guaranteed to the petitioner under Article 14 of the Constitution of India. It has been already recorded hereinabove that before the draft plan was sanctioned, a substantial portion of the building belonging to the petitioner was likely to be demolished and, therefore, the petitioner had made a representation to respondent no. 2. The said representation was duly considered and some changes were also made before finalising reconstitution of the Final Plot to be allotted to the petitioner. Only thereafter, the draft scheme had been sanctioned. Some grievance made by the petitioner could not be redressed even after another representation was made by the petitioner. Thus, it is clear that due effort was made by respondent no. 2 to see that the building of the petitioner is protected as far as possible. When such an effort was made, it cannot be said that respondent no. 2 has acted arbitrarily. As observed hereinabove, some persons have to suffer in the process of development of the city, and if some harm has been caused to the petitioner in the process, it cannot be said that respondent no. 2 has acted arbitrarily, more particularly when the petitioner is also to be compensated in terms of money for the loss suffered by him. Thus, there is no substance in the allegation that the respondent authorities have acted in an arbitrary manner.

35. So far as the argument with regard to the violation of the doctrine of proportionality is concerned, in my opinion, the said argument is also without any substance. The authority has to strike a

balance between interest of an individual and the cause with which the scheme is prepared and planning is made. If, in the process of town planning, so as to widen the road or so as to reserve some land for a public purpose, if an individual has to lose his land, it cannot be said that the doctrine of proportionality has not been taken care of. In the instant case around 40 plot holders had to suffer, or perhaps some more, who might not have approached this Court, but all of them will be duly compensated in terms of money or by allotment of other plots. The doctrine of proportionality itself provides that in the process of striking the balance, for betterment of the society at large, if a person has to suffer, it cannot be said that the said doctrine has been violated. It is pertinent to note that even those residents, who would be getting compensation in terms of money for loss suffered by them, would be surely benefited like other residents by having better environment, better roads, better public utility services, etc. Not even the present residents, but even future generations would be benefited by having gardens, more educational institutions, more hospitals, wider roads etc. Looking to the benefits which all the residents are to get, it cannot be said that the doctrine of propotionality has been violated, as alleged by the petitioner, because the loss is suffered only by a few of the residents, and that too when they are to be compensated in terms of money. The said doctrine can be said to be violated only when for benefit of someone or some persons, the alleged action causes harm to the society and the extent or degree of harm is much more than the benefit given to some or someone. The Court has to examine whether the adverse effects of the action impugned are more than the overall benefits to the society at large and if the Court comes to the conclusion, after having an overall view of the matter, that the adverse effects are more, then the Court should set aside the impugned action in view of the doctrine of proportionality. In view of the above facts, by no stretch of imagination it can be said that more harm has been caused to the society due to making of the scheme, and therefore in my opinion, there is no violation of the doctrine of proportionality.

36. It has been alleged that the respondent authorities have committed several errors and the said errors can be said to be errors of jurisdiction. According to the petitioner, this Court should exercise its jurisdiction under the provisions of Article 226 of the Constitution of India. The said allegation is also not correct. In view of the facts stated hereinabove, it

is clear that no error has been committed by the respondent authorities. Simply because some portion of the construction put up by the petitioner is to be demolished, it cannot be said that the respondent authorities have committed an error. It has been observed hereinabove that simply because some residents would lose their land or are constrained to demolish their buildings, it cannot be said that the scheme is bad. One has to have an overall view, and if upon having an overall view, it appears that great damage has been caused to the society affecting large number of people, then only it can be said that the respondent authorities have acted in an erroneous manner. That does not appear to be the position here. I do not, therefore, find any substance in the said allegation also.

37. Looking to the overall picture of the scheme and more particularly looking to the fact that only a small portion of the building of the petitioner is to be demolished, it cannot be said that an error has been committed by the respondent authorities in framing the scheme and, therefore, the respondent authorities cannot be directed to vary the scheme as suggested by the petitioner.

38. It has been alleged that in the process of demolishing a portion of the building, the petitioner's entire building might be demolished. The said averments made by the petitioner is not correct. In pursuance of instructions received from the Town Planner, who is personally present in the Court, learned advocate Shri N.J. Shah has submitted that it is possible to demolish a portion of the building without demolishing the entire building. The Town Planner is an expert in his subject, and being a professionally trained engineer, he knows the subject better. According to the submissions made by learned advocate Shri Shah for respondent no.2, there is no substance in the allegation that the petitioner's entire building will be demolished in the process of demolition of the construction put up on 20 sq meters of land. I have no reason to disbelieve the submission made on behalf of respondent no. 2, which is in pursuance of an opinion given by an expert in the field of engineering, that, without demolishing the entire building of the petitioner, it is possible to demolish the construction on the land, which is now not forming part of Final Plot No. 83.

39. For the reasons stated hereinabove, there does not appear to be any illegality committed in the process of making Town Planning Scheme No. 3 of Anjar and there

does not appear to be any substance in the grievances ventilated by the petitioner in this petition.

40. The petition is therefore rejected. Notice is discharged. Ad-interim relief granted earlier stands vacated.

41. Looking to the facts of the case, in pursuance of a request made by Shri Anjaria for the petitioner, it is directed that the implementation of this order shall be stayed for 4 weeks from today.

(A.R. DAVE, J.)

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